

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 3:13-cr-00023-RLY-MPB
)	
DAVID J. NALLEY,)	-01
)	
Defendant.)	

REPORT AND RECOMMENDATION

On August 27, 2020, the Court held an Initial Appearance on a Warrant for Violation of Supervised Release. On September 4, 2020 the Court held the Final Hearing on Revocation of Supervised Release. Defendant Nalley appeared in person with his appointed counsel Dax Womack. The government appeared by Matt Miller, Assistant United States Attorney. The United States Probation and Parole Office appeared by Officer Justin Driskill.

The Court conducted the following procedures in accordance with Fed. R. Crim. P. 32.1(a)(1) and 18 U.S.C. § 3583:

1. The Court advised Defendant Nalley of his rights and provided him with a copy of the petition. Defendant Nalley waived his right to a preliminary hearing.
2. After being placed under oath, Defendant Nalley admitted violations 1, 2, 3 and 4 ([Docket No. 47](#)).
3. The allegations to which Defendant admitted, as fully set forth in the petition, are:

	Violation Number	Nature of Noncompliance
	1	<p>"You shall not use or possess any controlled substances prohibited by applicable state or federal law, unless authorized to do so by a valid prescription from a licensed medical practitioner. You shall follow the prescription instructions regarding frequency and dosage."</p> <p>On May 27, June 29 and July 1, 2020, Mr. Nalley submitted urine samples that tested positive for amphetamines. Mr. Nalley admitted to using methamphetamine.</p>
	2	<p>"The defendant shall notify the probation officer at least ten days prior to any change in residence or employment."</p> <p>On July 30, 2020, Officer Sanders spoke with Mr. Nalley's father, Stephen Nalley. Stephen Nalley advised that David Nalley was no longer residing at his residence located at 299 Red Barn Road Boonville, IN 47601.</p>
	3	<p>"You shall submit to substance abuse testing to determine if you have used a prohibited substance or to determine compliance with substance abuse treatment. Testing may include no more than 8 drug tests per month. You shall not attempt to obstruct or tamper with the testing methods."</p> <p>Mr. Nalley failed to appear for drug screens on the following dates: June 25, July 15, July 20, July 24, July 27 and July 29, 2020.</p>
	4	<p>"The defendant shall participate in a substance abuse treatment program at the direction of the probation officer, which may include no more than eight drug tests per month. The defendant shall abstain from the use of all intoxicants, including alcohol, while participating in a substance abuse treatment program. The defendant is responsible for paying a portion of the fees of substance abuse testing and/or treatment in accordance with his ability to pay."</p> <p>Mr. Nalley attended his orientation appointment with NOW Counseling on July 6, 2020. He canceled his first group class on July 13, 2020 and has not attended any classes since.</p>

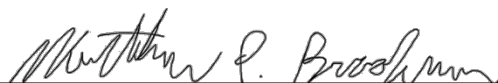
4. The parties stipulated that:

- (a) The highest grade of violation is a Grade B violation.
- (b) Defendant's criminal history category is VI.
- (c) The advisory range of imprisonment applicable upon revocation of supervised release, therefore, is 21-24 months' imprisonment.

The Magistrate Judge, having considered the factors in 18 U.S.C. § 3553(a), and as more fully set forth on the record, finds that the Defendant violated the conditions in the petition, that his supervised release should be revoked, and that he be sentenced to custody of the Attorney General or his designee for a period of twenty one (21) months with no further supervision to follow after release from the Bureau of Prisons.

The parties are hereby notified that the District Judge may reconsider any matter assigned to a Magistrate Judge. The parties have fourteen days after being served a copy of this Report and Recommendation to serve and file written objections with the District Judge.

Dated: September 9, 2020


Matthew P. Brookman
United States Magistrate Judge
Southern District of Indiana

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